

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10252 OF 2015

VISHNU BALIRAM DHERE
VERSUS
THE CHIEF OFFICER AND OTHERS

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Advocate for Petitioner : Shri Ghatge Mahesh V.
Advocate for Respondents 2 & 3 : Shri Venjane T.M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 30, 2018

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PER COURT :-

1. Learned Advocates for the respective parties submit that no settlement has been arrived at.
2. Learned Advocate for the petitioner submits that the petitioner is aggrieved by the impugned order dated 11.8.2015, by which, the trial Court has rejected application Exhibit 124 and confirmed the order of closing the oral evidence of the plaintiff. It is frankly pointed out that the suit of 2012 was conducted with promptitude and the plaintiff examined two witnesses till 16.10.2014. On 16.12.2014, the recording of oral evidence was closed under the orders of the Court.
3. Defendant No.1 closed his evidence on 30.12.2014 and defendant No.2 stepped into the witness box. Exhibit 124 was filed on

14.7.2015 praying for recalling the evidence closing order. Further contention is that the RCS No.168 of 2012 was only three years old and as such, it cannot be said that the plaintiff is deliberately delaying the suit. By an order of this Court (Coram : Sunil P. Deshmukh, J.) dated 12.10.2016, the suit has been stayed for the last three years.

4. Learned Advocate for the contesting respondents 2 and 3 has opposed this petition. He submits that the negligence and delay caused by the petitioner is apparent on the face of the record. Though the petitioner is the plaintiff, he cannot proceed with his suit as per his desire. No justifiable grounds are put up in Exhibit 124 and the trial Court has rightly rejected Exhibit 124. He prays for the dismissal of the suit with heavy costs.

5. Though I find that the learned Advocate for the defendant Nos.2 and 3 is justified in supporting the impugned order, the fact remains that the suit was only three years' old when the plaintiff moved Exhibit 124. He is also correct in submitting that the suit cannot be conducted as per the desire of the plaintiff. However, I find that since an immovable property is involved in the matter and the suit was not very old, the trial Court could have given one last chance to the plaintiff by imposing costs.

6. When called upon, the learned Advocate for the plaintiff submits that he cannot commit as to how many witnesses are still to be examined.

7. In view of the above, this petition is partly allowed. The impugned order dated 11.8.2015 is quashed and set aside and Exhibit 124 is allowed subject to the following conditions:-

(A) The plaintiff shall deposit costs of Rs.10,000/-. Learned Advocate for respondents 2 and 3 submits that an amount of RS.2,000/- be donated for the treatment of poor patients.

(B) As such, the petitioner shall deposit an amount of Rs. 2,000/-(Rs. Two Thousand only) on/or before 22.12.2018 with the Government Medical College and Hospital, Aurangabad, through Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft (Demand Draft be drawn in the name of “Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad”) and shall report compliance of this direction by producing a receipt of having deposited the amount, before the Registrar (Judicial) of this Court on or before 4.1.2019.

(C) The petitioner shall deposit an amount of Rs.8,000/- (Rs. Eight Thousand only/-) with the learned Advocate for the said defendants, as per his request, within the said period and the defendant shall make a statement before the

trial Court of having received the costs.

(D) Respondent No.1 has remained absent in this proceedings and hence will be deprived of costs.

(E) The petitioner shall conclude the oral evidence on behalf of the plaintiff on/or before 31.1.2019. No adjournment would be granted, thereafter.

(F) After the defendants conclude their evidence, the trial Court would endeavour to decide RCS No.468 of 2012 as expeditiously as possible and in any case on/or before 31.7.2019.

(RAVINDRA V. GHUGE, J.)

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